

**ORIGINAL**

Mr. Frank Albert Florez  
CDCR ID #V-18804  
CTF-North R.B. 314  
P.O. Box 705  
Soledad, CA 93960

In Pro se

FILED  
09 MAY -7 PM 3:06  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANK ALBERT FLOREZ,

Petitioner,

vs.

THOMAS L. CARREY, Warden,

Respondent.

Case No. C 06-4141 JSW (PR)

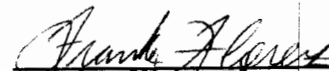
PETITIONER'S MOTION FOR RELIEF  
FROM DEFAULT FOR LATE FILING  
OF NOTICE OF APPEAL

Under Federal Rule of Appellate Procedure Rule 4(a)(5), Petitioner-Appellant Frank Albert Florez request a thirty day extension of time to file Notice of Appeal. Currently, the last day to file notice of appeal was Tuesday, April 2, 2009. Rules 3, 4, Fed.R.App.P.

The reasons for this request are set forth in the accompanying Declaration of Frank Albert Florez.

Dated: May 3, 2009

Respectfully submitted,

  
Frank Albert Florez  
In Pro se

1 Mr. Frank Albert Florez  
2 CDCR ID #V-18804  
3 CTF-North R.B. 314  
4 P.O. Box 705  
5 Soledad, CA 93960

6 In Pro se

7 IN THE UNITED STATES DISTRICT COURT  
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 FRANK ALBERT FLOREZ,

Case No. C 06-4141 JSW (PR)

10 Petitioner,

11 vs.

12 THOMAS L. CAREY, Warden,

13 Respondent. /

DECLARATION OF PETITIONER IN  
SUPPORT OF PETITIONER'S MOTION  
FOR RELIEF FROM DEFAULT FOR  
LATE FILING OF NOTICE OF APPEAL

14 I, Frank Albert Florez, declare:

15 I am a state prisoner the petitioner-appellant in the above entitled cause  
16 of action proceeding without counsel petition for a writ of habeas corpus  
17 under 28 U.S.C. § 2254. This Court issued an ordered denying petition for a  
18 writ of habeas corpus on March 2, 2009.

19 1. When I received this denial of habeas relief from the U.S. Northern  
20 District Court I was housed at Corcoran State Prison, and due to the over  
21 crowded conditions and the ongoing lockdowns therein Corcoran, and without a  
22 court order deadline I was not able to access the law library therein.

23 2. To further impede my ability to file the notice of appeal within the  
24 time frames on or about April 5, 2009, I was told to pack up my personal  
25 property because I was being transferred to Soledad State Prison CTF-North.

26 3. On April 9, 2009, I was transferred from Corcoran to Soledad State Prison  
27 CTF-North. Upon my arrival I was confined to quarter do to my new arrival

1 status (CTQ) and on April 22, 2009, I appeared before CTF-North Classification  
2 Committee thereafter I was released to general population.

3 4. Due to the overcrowded conditions and ongoing lockdowns herein CTF-North  
4 A-Yard, and without court order deadlines I was not given priority access to  
5 law library herein CTF-North has impeded my ability to properly research and  
6 meet the required time frame to file a notice of appeal.


7 5. Petitioner-Appellant has not sought any extension before now.

8 6. I have exercised diligence in seeking to accomplish all that needs to  
9 be done on time, but find that the requested extension is required to properly  
10 prepare the notice of appeal.

11 7. This request is not made for any improper purposes, the request  
12 extension will cause no prejudice to Respondent-Appellee and I am confident  
13 that I can complete the Notice of Appeal within the thirty days.

14 I declare under penalty of perjury that the above statements are true.

15  
16 Dated: May 3, 2009

  
Declarant/Frank Albert Florez  
CDCR ID #V-18804  
In Pro se

1 Mr. Frank Albert Florez  
2 CDCR ID #V-18804  
3 CTF-North R.B. 314  
4 P.O. Box 705  
5 Soledad, CA 93960

6 In Pro se

7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 FRANK ALBERT FLOREZ,

11 Petitioner-Appellant,

12 vs.

13 THOMAS L. CAREY, Warden,

14 Respondent-Appellee.

Case No. C 06-4141 JSW (PR)

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
**NOTICE OF APPEAL**

16 Petitioner-Appellant Frank Albert Florez, is a state prisoner proceeding  
17 without counsel appeal to the United States Court of Appeals for the Ninth  
18 Circuit from the order of the United States District Court for the Northern  
19 District of California filed March 2, 2009, granting a judgment in favor of  
20 Respondent, based on the Court found "there was no constitutional error found  
21 in the preceding claims, there is nothing to accumulate in order to warrant  
22 relief."

23 Dated: May 3, 2009,

Respectfully submitted,

24   
25 Frank Albert Florez

26 In Pro se

DECLARATION OF SERVICE BY MAIL

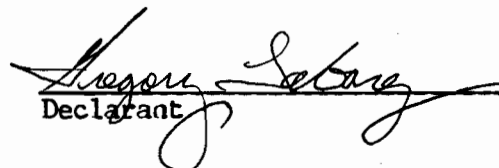
CASE NAME: FRANK ALBERT FLOREZ, Petitioner vs. THOMAS L. CAREY, Warden, Respondent.

CASE NO.: C 06-4141 JSW (PR)

I, Gregory Tabarez, declare that I am over the age of eight-teen (18) years; I am/am not a party to the attached action; I served the attached documents entitled: MOTION FOR EXTENSION OF TIME TO FILE NOTICE OF APPEAL; NOTICE OF APPEAL on the persons/parties specified below by placing a true copy of said documents into a sealed envelope with the appropriate postage affixed thereto and surrendering said envelope(s) to the staff of the California Department of Corrections and Rehabilitation Facilities entrusted with the logging and mailing of inmate legal mail addressed as follows:

(1) U.S. District Court for the Northern District of California

There is First Class mail delivery service by the United States Post Office between the place of mailing and the addresses indicated above. I declare under the penalty of perjury under the laws of the United States and the of California that the foregoing is true and correct and that I executed this service this 3 day of May 2009, in Soledad State Prison, California.

  
Declarant